

AMENDED IN SENATE APRIL 7, 2016

SENATE BILL

No. 918

Introduced by Senator Vidak

January 27, 2016

An act to *amend Sections 5660, 5665, 5670, 5690, 5700, 5705, 5710, 5720, and 5730 of, and to add Section 4041 to, the Civil Code*, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

SB 918, as amended, Vidak. Common interest developments.

Existing law, the Davis-Stirling Common Interest Development Act, defines and regulates common interest developments. Existing law authorizes a homeowners association to place a lien on a property and to take specified enforcement actions to satisfy outstanding dues or assessments owed on a property in the development.

This bill would require the owners of the separate interests in a common interest development to annually provide the association with specified written information for the purpose of receiving notice of an assessment lien on their property. The bill would require the association to provide specified notice by personal service to an owner and to offer to participate in dispute resolution procedures with an owner prior to recording a notice of default against the owner's separate interest. The bill would require that specified language be included in a written notice provided to an owner prior to the recording of a notice of default by the association.

The bill would also require the association to try to personally serve the owner on at least 3 occasions, including at specified times, and to prepare a statement regarding the attempts at personal service. The bill would make conforming changes.

Existing law requires an association to provide an owner with an opportunity to meet and confer with the association prior to recording a lien for delinquent assessments.

This bill would suspend any action to enforce a lien by the association for up to 90 days when an owner requests to meet and confer.

~~*This bill would state the intent of the Legislature to enact legislation to address issues relating to notice to unit owners in common interest developments who are delinquent in the payment of association assessments.*~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 4041 is added to the Civil Code, to read:*
2 *4041. (a) An owner of a separate interest shall, on an annual*
3 *basis, provide written notice to the association of all of the*
4 *following:*
5 *(1) The mailing address or addresses to which notices from the*
6 *association are to be delivered.*
7 *(2) An alternate or secondary address where notices from the*
8 *association are to be delivered.*
9 *(3) The name and address of his or her legal representative, if*
10 *any, including any person with power of attorney or other person*
11 *who can be contacted in the event of the owner's extended absence*
12 *from the separate interest.*
13 *(4) Whether the separate interest is owner-occupied, is rented*
14 *out, if the parcel is developed but vacant, or if the parcel is*
15 *undeveloped land.*
16 *(b) The association shall solicit these annual disclosures of*
17 *each owner and enter the data into its books and records at least*
18 *30 days prior to making its own required annual disclosures to*
19 *members under Section 5300.*
20 *(c) If an owner fails to provide the notices as set forth in*
21 *paragraphs (1) and (2) of subdivision (a), the property address*
22 *shall be deemed to be the mailing address to which notices are to*
23 *be delivered.*
24 *SEC. 2. Section 5660 of the Civil Code is amended to read:*
25 *5660. At least 30 days prior to recording a an assessment lien*
26 *upon the separate interest of the owner of record to collect a debt*

1 that is past due under Section 5650, the association shall notify
2 the owner of record in writing by certified mail of the following:

3 (a) ~~A general description of the~~ *The actual* collection and lien
4 enforcement procedures of the association *adopted by the board,*
5 *disclosed to owners under Section 5310, and in effect at the time*
6 *that the notice is sent under this section* and the method of
7 calculation of the amount, a statement that the owner of the separate
8 interest has the right to inspect *and copy* the association records
9 pursuant to Section 5205, ~~and~~ *and the right to request a copy of*
10 *the owner's own assessment account ledger, if any, in the custody*
11 *of the association's agents. The association shall also notify the*
12 *owner of the following statement in 14-point boldface type, if*
13 *printed, or in capital letters, if typed:*

14
15 “IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST
16 IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND
17 IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT
18 COURT ACTION.”

19
20 (b) An itemized statement of the charges owed by the owner,
21 including items on the statement which indicate the amount of any
22 delinquent assessments, the fees and reasonable costs of collection,
23 reasonable attorney's fees, any late charges, and interest, if any.
24 *The itemized statement shall show how and when the owner's*
25 *payments were applied to the assessment debt and to collection*
26 *charges by the association or by its agent.*

27 (c) A statement that the owner shall not be liable to pay the
28 charges, interest, and costs of collection, if it is determined the
29 assessment was paid on time to the association.

30 (d) *A statement that the collection practices of the association*
31 *may be governed by state and federal laws regarding fair debt*
32 *collection and that penalties can be imposed for debt collection*
33 *practices that violate these laws.*

34 ~~(d)~~
35 (e) The right to request a meeting with the board as provided
36 in Section 5665.

37 ~~(e)~~
38 (f) The right to dispute the assessment debt by submitting a
39 written request for dispute resolution to the association pursuant

1 to the association's "meet and confer" program required in Article
2 2 (commencing with Section 5900) of Chapter 10.

3 (f)

4 (g) The right to request alternative dispute resolution with a
5 neutral third party pursuant to Article 3 (commencing with Section
6 5925) of Chapter 10 before the association may ~~initiate foreclosure~~
7 *record the assessment lien* against the owner's separate interest,
8 except that binding arbitration shall not be available if the
9 association intends to initiate a judicial foreclosure.

10 *SEC. 3. Section 5665 of the Civil Code is amended to read:*

11 5665. (a) An owner, other than an owner of any interest that
12 is described in Section 11212 of the Business and Professions Code
13 that is not otherwise exempt from this section pursuant to
14 subdivision (a) of Section 11211.7 of the Business and Professions
15 Code, may submit a written request to meet with the board to
16 discuss a payment plan for the debt noticed pursuant to Section
17 5660. The association shall provide the owners the standards for
18 payment plans, if any exists.

19 (b) The board shall meet with the owner in executive session
20 within 45 days of the postmark of the request, if the request is
21 mailed within 15 days of the date of the postmark of the notice,
22 unless there is no regularly scheduled board meeting within that
23 period, in which case the board may designate a committee of one
24 or more directors to meet with the owner.

25 (c) Payment plans may incorporate any assessments that accrue
26 during the payment plan period. Additional late fees shall not
27 accrue during the payment plan period if the owner is in
28 compliance with the terms of the payment plan.

29 (d) Payment plans shall not impede an association's ability to
30 record a lien on the owner's separate interest to secure payment
31 of delinquent assessments.

32 (e) In the event of a default on any payment plan, the association
33 may resume its efforts to collect the delinquent assessments from
34 the time prior to entering into the payment plan.

35 (f) *Nothing in this section restricts the right of an owner, with*
36 *or without a payment plan in place, from making a payment in any*
37 *amount directly to the association pursuant to subdivision (a) of*
38 *Section 5655. The association shall accept the payment and shall*
39 *apply it per subdivision (a) of Section 5655.*

40 *SEC. 4. Section 5670 of the Civil Code is amended to read:*

1 5670. (a) Prior to recording a lien for delinquent assessments,
2 an association shall offer the owner and, if so requested by the
3 owner, participate in dispute resolution pursuant to the association's
4 "meet and confer" program required in Article 2 (commencing
5 with Section 5900) of Chapter 10.

6 (b) *When an owner requests to meet and confer under this*
7 *section, the association shall suspend all collection efforts for 90*
8 *days or until the meet and confer procedures have been completed,*
9 *whichever is sooner. If the association fails to respond in writing*
10 *within 30 days from the date of the owner's request with a good*
11 *faith effort to establish a time and place to meet and confer, then*
12 *any lien recorded thereafter by the association shall be void and*
13 *unenforceable. If the owner fails to respond to the association's*
14 *effort to establish a time and place to meet and confer within 30*
15 *days thereof, then the association may proceed with collection*
16 *efforts, including the recording of a lien, without further pursuing*
17 *a meet and confer procedure.*

18 SEC. 5. *Section 5690 of the Civil Code is amended to read:*

19 5690. An association that fails to comply with the procedures
20 set forth in this article shall, prior to recording a lien, recommence
21 the required notice-~~process~~. *process, commencing with Section*
22 *5660.* Any costs associated with recommencing the notice process
23 shall be borne by the association and not by the owner of a separate
24 interest.

25 SEC. 6. *Section 5700 of the Civil Code is amended to read:*

26 5700. (a) Except as otherwise provided in this article, after
27 the expiration of 30 days following the recording of ~~a~~ *an*
28 *assessment* lien created pursuant to Section 5675, the lien may be
29 enforced in any manner permitted by law, including sale by the
30 court, sale by the trustee designated in the notice of delinquent
31 assessment, or sale by a trustee substituted pursuant to Section
32 2934a.

33 (b) Nothing in Article 2 (commencing with Section 5650) or in
34 subdivision (a) of Section 726 of the Code of Civil Procedure
35 prohibits actions against the owner of a separate interest to recover
36 sums for which a lien is created pursuant to Article 2 (commencing
37 with Section 5650) or prohibits an association from taking a deed
38 in lieu of foreclosure.

39 SEC. 7. *Section 5705 of the Civil Code is amended to read:*

1 5705. (a) Notwithstanding any law or any provisions of the
2 governing documents to the contrary, this section shall apply to
3 debts for assessments that arise on and after January 1, 2006.

4 (b) Prior to ~~initiating a foreclosure~~ *recording a notice of default*
5 on an owner's separate interest, the association shall offer the
6 owner and, if so requested by the owner, *shall* participate in dispute
7 resolution pursuant to the association's "meet and confer" program
8 required in Article 2 (commencing with Section 5900) of Chapter
9 10 or alternative dispute resolution as set forth in Article 3
10 (commencing with Section 5925) of Chapter 10. The decision to
11 pursue dispute resolution or a particular type of alternative dispute
12 resolution shall be the choice of the owner, except that binding
13 arbitration shall not be available if the association intends to initiate
14 a judicial foreclosure.

15 (c) The decision to ~~initiate foreclosure of~~ *record a notice of*
16 *default in order to enforce* a lien for delinquent assessments that
17 has been validly recorded shall be made only by the board and
18 ~~may~~ *shall* not be delegated to an agent of the association. The
19 board shall approve the decision by a majority vote of the directors
20 in an executive session. The board shall record the vote in the
21 minutes of the next meeting of the board open to all members. The
22 board shall maintain the confidentiality of the owner or owners of
23 the separate interest by identifying the matter in the minutes by
24 the parcel number of the property, rather than the name of the
25 owner or owners. A board vote to approve foreclosure of a lien
26 shall take place at least 30 days prior to ~~any public sale.~~ *recording*
27 *the notice of default.*

28 (d) ~~The~~ *After the board votes to enforce the lien but before*
29 *recording the notice of default, the* board shall provide notice by
30 *personal service of its vote and of its intention to enforce the lien*
31 in accordance with the manner of service of summons in Article
32 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of
33 Part 2 of the Code of Civil Procedure to an owner of a separate
34 interest who occupies the separate interest or to the owner's legal
35 representative, if the board votes to foreclose upon the separate
36 interest. ~~The board shall provide written notice to an owner of a~~
37 ~~separate interest who does not occupy the separate interest by~~
38 ~~first-class mail, postage prepaid, at the most current address shown~~
39 ~~on the books of the association. In the absence of written~~
40 ~~notification by the owner to the association, the address of the~~

1 ~~owner's separate interest may be treated as the owner's mailing~~
2 ~~address. To effect personal service, the association and its agent~~
3 ~~shall rely on the data provided annually by the owner of the~~
4 ~~separate interest under Section 4041.~~

5 (e) *If the association or its agents have attempted personal*
6 *service, in accordance with the manner of service of summons as*
7 *set forth in Article 3 (commencing with Section 415.10) of the Code*
8 *of Civil Procedure three or more times, including at least one*
9 *attempt after 6:00 p.m. and one attempt on a weekend or legal*
10 *holiday, on an owner who occupies the separate interest and, then*
11 *both the association and its agents shall jointly subscribe a*
12 *statement of compliance with the personal service requirement.*
13 *This statement shall be recorded with the county recorder where*
14 *the subject property is located. The statement shall include all of*
15 *the following data:*

16 (1) *The physical address of subject property.*

17 (2) *The names of owners of the separate interest as they appear*
18 *on the deed of title.*

19 (3) *The addresses where official notices are to be sent, per*
20 *Section 4041, as shown on the association's membership books.*

21 (4) *The names and titles of documents to be delivered including*
22 *the board's vote as it will appear in the association minutes and*
23 *a copy of the statement.*

24 (5) *The names of, and contact information for, the persons*
25 *attempting service.*

26 (6) *The dates and times of attempted service.*

27 (f) *The board shall provide written notice to an owner of a*
28 *separate interest who does not occupy the separate interest by*
29 *first-class mail, postage prepaid, at the most current address shown*
30 *on the books of the association per Section 4041. In the absence*
31 *of written notification under Section 4041 by the owner to the*
32 *association, the address of the owner's separate interest shall be*
33 *deemed to be the owner's mailing address.*

34 SEC. 8. *Section 5710 of the Civil Code is amended to read:*

35 5710. (a) *Any sale by the trustee shall be conducted in*
36 *accordance with Sections 2924, 2924b, and 2924c applicable to*
37 *the exercise of powers of sale in mortgages and deeds of trust.*

38 (b) *In addition to the requirements of Section 2924, the*
39 *association shall serve a notice of default on the person named as*
40 *the owner of the separate interest in the association's records or,*

1 if that person has designated a legal representative pursuant to this
2 subdivision, on that legal representative. Service shall be in
3 accordance with the manner of service of summons in Article 3
4 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part
5 2 of the Code of Civil Procedure. ~~An~~ *If the association or its agents*
6 *have attempted personal service three or more times then it may*
7 *execute a statement of due diligence pursuant to Section 5705,*
8 *regarding the attempts to serve the notice of default. Pursuant to*
9 *paragraph (3) of subdivision (a) of Section 4041, an owner may*
10 designate a legal representative in a writing that is mailed to the
11 association in a manner that indicates that the association has
12 received it.

13 (c) The fees of a trustee may not exceed the amounts prescribed
14 in Sections 2924c and 2924d, plus the cost of service for either of
15 the following:

- 16 (1) The notice of default pursuant to subdivision (b).
17 (2) The decision of the board to foreclose upon the separate
18 interest of an owner as described in subdivision (d) of Section
19 5705.

20 SEC. 9. Section 5720 of the Civil Code is amended to read:

21 5720. (a) Notwithstanding any law or any provisions of the
22 governing documents to the contrary, this section shall apply to
23 debts for assessments that arise on and after January 1, 2006.

24 (b) An association that seeks to collect delinquent regular or
25 special assessments of an amount less than one thousand eight
26 hundred dollars (\$1,800), not including any accelerated
27 assessments, late charges, fees and costs of collection, attorney's
28 fees, or interest, may not collect that debt through judicial or
29 nonjudicial foreclosure, but may attempt to collect or secure that
30 debt in any of the following ways:

- 31 (1) By a civil action in small claims court, pursuant to Chapter
32 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the
33 Code of Civil Procedure. An association that chooses to proceed
34 by an action in small claims court, and prevails, may enforce the
35 judgment as permitted under Article 8 (commencing with Section
36 116.810) of Chapter 5.5 of Title 1 of Part 1 of the Code of Civil
37 Procedure. The amount that may be recovered in small claims
38 court to collect upon a debt for delinquent assessments may not
39 exceed the jurisdictional limits of the small claims court and shall
40 be the sum of the following:

1 (A) The amount owed as of the date of filing the complaint in
2 the small claims court proceeding.

3 (B) In the discretion of the court, an additional amount to that
4 described in subparagraph (A) equal to the amount owed for the
5 period from the date the complaint is filed until satisfaction of the
6 judgment, which total amount may include accruing unpaid
7 assessments and any reasonable late charges, fees and costs of
8 collection, attorney's fees, and interest, up to the jurisdictional
9 limits of the small claims court.

10 (2) By recording a lien on the owner's separate interest upon
11 which the association may not foreclose until the amount of the
12 delinquent assessments secured by the lien, exclusive of any
13 accelerated assessments, late charges, fees and costs of collection,
14 attorney's fees, or interest, equals or exceeds one thousand eight
15 hundred dollars (\$1,800) or the assessments secured by the lien
16 are more than 12 months delinquent. An association that chooses
17 to record a lien under these provisions, prior to recording the lien,
18 shall offer the owner and, if so requested by the owner, participate
19 in dispute resolution as set forth in Article 2 (commencing with
20 Section 5900) of Chapter 10.

21 (3) Any other manner provided by law, except for judicial or
22 nonjudicial foreclosure.

23 (c) The limitation on foreclosure of assessment liens for amounts
24 under the stated minimum in this section does not apply to ~~any~~
25 *either* of the following:

26 (1) Assessments secured by a lien that are more than 12 months
27 delinquent.

28 (2) Assessments owed by owners of separate interests in
29 time-share estates, as defined in subdivision (x) of Section 11212
30 of the Business and Professions Code.

31 ~~(3) Assessments owed by the developer.~~

32 *SEC. 10. Section 5730 of the Civil Code is amended to read:*

33 5730. (a) The annual policy statement, prepared pursuant to
34 Section 5310, shall include the following notice, in at least 12-point
35 type:

36
37 "NOTICE ASSESSMENTS AND FORECLOSURE

38
39 This notice outlines some of the rights and responsibilities of
40 owners of property in common interest developments and the

1 associations that manage them. Please refer to the sections of the
2 Civil Code indicated for further information. A portion of the
3 information in this notice applies only to liens recorded on or after
4 January 1, 2003. You may wish to consult a lawyer if you dispute
5 an assessment.

7 ASSESSMENTS AND FORECLOSURE

8 Assessments become delinquent 15 days after they are due,
9 unless the governing documents provide for a longer time. The
10 failure to pay association assessments may result in the loss of an
11 owner's property through foreclosure. Foreclosure may occur
12 either as a result of a court action, known as judicial foreclosure,
13 or without court action, often referred to as nonjudicial foreclosure.
14 For liens recorded on and after January 1, 2006, an association
15 may not use judicial or nonjudicial foreclosure to enforce that lien
16 if the amount of the delinquent assessments or dues, exclusive of
17 any accelerated assessments, late charges, fees, attorney's fees,
18 interest, and costs of collection, is less than one thousand eight
19 hundred dollars (\$1,800). For delinquent assessments or dues in
20 excess of one thousand eight hundred dollars (\$1,800) or more
21 than 12 months delinquent, an association may use judicial or
22 nonjudicial foreclosure subject to the conditions set forth in Article
23 3 (commencing with Section 5700) of Chapter 8 of Part 5 of
24 Division 4 of the Civil Code. When using judicial or nonjudicial
25 foreclosure, the association records a lien on the owner's property.
26 The owner's property may be sold to satisfy the lien if the amounts
27 secured by the lien are not paid. (Sections 5700 through 5720 of
28 the Civil Code, inclusive)

29 In a judicial or nonjudicial foreclosure, the association may
30 recover assessments, reasonable costs of collection, reasonable
31 attorney's fees, late charges, and interest. The association may not
32 use nonjudicial foreclosure to collect fines or penalties, except for
33 costs to repair common area damaged by a member or a member's
34 guests, if the governing documents provide for this. (Section 5725
35 of the Civil Code)

36 The association must comply with the *notice and disclosure*
37 requirements of Article 2 (commencing with Section 5650) of
38 Chapter 8 of Part 5 of Division 4 of the Civil Code when collecting
39 delinquent assessments. If the association fails to follow these
40 requirements, it may not record a *an assessment* lien on the owner's

1 property until it has satisfied those requirements. Any additional
2 costs that result from satisfying the requirements are the
3 responsibility of the association. (Section 5675 of the Civil Code)

4 At least 30 days prior to recording a lien on an owner's separate
5 interest, the association must provide the owner of record with
6 certain documents by certified mail, including a description of its
7 collection and lien enforcement procedures and the method of
8 calculating the amount. It must also provide an itemized statement
9 of the charges owed by the owner. An owner has a right to review
10 the association's *and the agent's* records to verify the debt. (Section
11 5660 of the Civil Code)

12 If a lien is recorded against an owner's property in error, the
13 person who recorded the lien is required to record a lien release
14 within 21 days, and to provide an owner certain documents in this
15 regard. (Section 5685 of the Civil Code)

16 The collection practices of the association may be governed by
17 state and federal laws regarding fair debt collection. Penalties can
18 be imposed for debt collection practices that violate these laws.

19 20 PAYMENTS

21 When an owner makes a payment, the owner may request a
22 receipt, and the association is required to provide it. On the receipt,
23 the association must indicate the date of payment and the person
24 who received it. The association must inform owners of a mailing
25 address for overnight payments. (Section 5655 of the Civil Code)

26 An owner may, but is not obligated to, pay under protest any
27 disputed charge or sum levied by the association, including, but
28 not limited to, an assessment, fine, penalty, late fee, collection
29 cost, or monetary penalty imposed as a disciplinary measure, and
30 by so doing, specifically reserve the right to contest the disputed
31 charge or sum in court or otherwise.

32 An owner may dispute an assessment debt by submitting a
33 written request for dispute resolution to the association as set forth
34 in Article 2 (commencing with Section 5900) of Chapter 10 of
35 Part 5 of Division 4 of the Civil Code. In addition, an association
36 ~~may not initiate a foreclosure without participating in~~ *record an*
37 *assessment lien without first offering to participate with the owner*
38 *in the association's internal dispute resolution or procedures or*
39 *alternative dispute resolution with a neutral third party as set forth*
40 *in Article 3 (commencing with Section 5925) of Chapter 10 of*

1 Part 5 of Division 4 of the Civil Code, if so requested by the owner.
2 Binding arbitration shall not be available if the association intends
3 to initiate a judicial foreclosure.

4 An owner is not liable for charges, interest, and costs of
5 collection, if it is established that the assessment was paid properly
6 on time. (Section 5685 of the Civil Code)

8 MEETINGS AND PAYMENT PLANS

9 An owner of a separate interest that is not a time-share interest
10 may request the association to consider a payment plan to satisfy
11 a delinquent assessment. The association must inform owners of
12 the standards for payment plans, if any exists. (Section 5665 of
13 the Civil Code)

14 The board must meet with an owner who makes a proper written
15 request for a meeting to discuss a payment plan when the owner
16 has received a notice of a delinquent assessment. These payment
17 plans must conform with the payment plan standards of the
18 association, if they exist. (Section 5665 of the Civil Code)”

19
20 *Nothing in this section restricts the right of an owner, with or*
21 *without a payment plan in place, from making a payment in any*
22 *amount at any time directly to the association toward an overdue*
23 *assessment pursuant to Section 5655.*

24
25 (b) An association distributing the notice required by this section
26 to an owner of an interest that is described in Section 11212 of the
27 Business and Professions Code that is not otherwise exempt from
28 this section pursuant to subdivision (a) of Section 11211.7 of the
29 Business and Professions Code may delete from the notice
30 described in subdivision (a) the portion regarding meetings and
31 payment plans.

32 ~~SECTION 1. It is the intent of the Legislature to enact~~
33 ~~legislation to address issues relating to notice to unit owners in~~
34 ~~common interest developments who are delinquent in the payment~~
35 ~~of association assessments.~~